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CITATIONS

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460686—42

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1188

THE UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, EXECUTOR OF THE ESTATE OF CAROLYN G. CAUGHEY, DECEASED, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 5–13) is reported in 44 B. T. A. 385. The opinion of the Circuit Court of Appeals for the Fourth Circuit (R. 21–27) is reported in 125 F. (2d) 401.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 29, 1942. (R. 27.) The pe-

tition for a writ of certiorari was filed April 28, 1942. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether there was a definite and unconditional bequest of the residuary estate to a charitable organization within the meaning of Section 303 (a) (3) of the Revenue Act of 1926.

STATUTE AND REGULATIONS INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 303. For the purpose of the tax the value of the net estate shall be determined—
>
> (a) In the case of a resident, by deducting from the value of the gross estate—
>
> * * * * *
>
> (3) The amount of all bequests, legacies, devises, or transfers, * * * to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * *.

Treasury Regulations 80 (1934 Ed.):

> ART. 47. *Conditional bequests.*—If the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

STATEMENT

The decedent, who died July 24, 1936, devised and bequeathed the residue of her estate to the petitioner as trustee to pay the income therefrom to her husband for life or until he should remarry, with the right to invade the principal should illness, accident or misfortune require more than the net income for his proper care and comfort.[1] The decedent's will further provided for the transfer of her country home, known as Rockwood Manor, to the National Girl Scouts to be utilized as a character building center. The conveyance was made subject to the further condition that should the Girl Scouts abandon the property or close the home, or abandon it for the purpose stated, then the property was to pass to the Esther Chapter of the Order of the Eastern Star (R. 1–2).

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[1] The average net income was slightly more than twice the average expenditures of the husband.

Upon the death or remarriage of decedent's husband, the decedent directed that one-half of her residuary estate be paid over to the Girl Scouts if they be still operating Rockwood Manor, the fund so paid over to be used only in the development and improvement of the home, but if they had abandoned the property or were not using it for the purpose stated, then such one-half of the residuary estate was to be paid over to the Eastern Star. The remaining one-half of the residuary estate was to be held in trust for 20 years after the death of the husband, to be then paid over to the Girl Scouts or to the Eastern Star, whichever one was then in possession of Rockwood Manor. It was stipulated that the Girl Scouts was organized and operated for one or more of the purposes enumerated in Section 303 (a) (3) of the Revenue Act of 1926, but that the Eastern Star was not such an organization (R. 2–4). The Commisisoner allowed a deduction on account of the gift of Rockwood Manor, but denied the deduction sought with respect to the residue.

The Board (with three dissents) held that the estate was entitled to a deduction on account of the bequest of the residuary estate to the Girl Scouts (R. 5–13) but the court below reversed (R. 27).

ARGUMENT

The only reason advanced for the allowance of the writ is an asserted conflict in principle with

Ithaca Trust Co. v. *United States,* 279 U. S. 151. There, the testator made a charitable bequest of the residue of his estate subject to a life estate in his wife with authority to invade the corpus to the extent "that may be necessary to suitably maintain her in as much comfort as she now enjoys." The Court held that the language of the will placed a limit upon the possible invasion of the corpus and that the limit was capable of being measured so that the amount of the charitable gift could therefore be computed with reasonable certainty.

In this case, on the other hand, the gift of the residue to the National Girl Scouts was not only subject to diminution by diversion for the life tenant's benefit under a more loosely drawn limitation, but the gift itself was contingent upon the continued operation of Rockwood Manor for the prescribed purposes. And since the decedent had not supplied the funds for the maintenance of the Rockwood Manor project, it was wholly conjectural whether the property would be so used at the critical times. The circumstances of this case thus distinguish it from the *Ithaca Trust Co.* case, and other circuit courts of appeals have denied deductions in situations comparable to that presented here. See *United States* v. *Fourth Nat. Bank in Wichita, Kan.,* 83 F. (2d) 85 (C. C. A. 10th), certiorari denied, 299 U. S. 575; *St. Louis Union Trust Co.* v. *Burnet,* 59 F. (2d) 922 (C. C. A. 8th). See also *Gammons* v. *Hassett,* 121

F. (2d) 229 (C. C. A. 1st), certiorari denied, 314 U. S. 673.

CONCLUSION

The court below correctly applied principles enunciated by this Court. There is no conflict of decisions. The petition should be denied.

Respectfully submitted.

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